

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEB 10 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of the Commission's Rules)
to Establish Competitive Service)
Safeguards for Local Exchange Carrier)
Provision of Commercial Mobile Radio)
Service)

WT Docket No. 96-162

Implementation of Section 601(d) of the)
Telecommunications Act of 1996)

COMMENTS OF PUERTO RICO TELEPHONE COMPANY

Puerto Rico Telephone Company ("PRTC") supports the Petition for Reconsideration filed by Aliant Communications Co. ("Aliant") of the Report and Order¹ issued in the above-referenced proceeding. Aliant has requested that the transaction by which the local exchange carrier "spins-off" its cellular system be recorded at the book value of the cellular system, rather than the fair market value of a mature cellular system. PRTC agrees with this request and supports the application of a Commission grant of the request to all similarly affected companies, including PRTC.²

¹ Amendment to the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, FCC No. 97-352 (rel. Oct. 3, 1997) ("Report and Order").

² The requirements of the Report and Order apply to PRTC. However, the Commercial Wireless Division has granted a limited waiver of the CMRS separate affiliate requirements on January 29, 1998. Request for Temporary Waiver of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, WT Docket 96-162, Order, DA 98-251 (Comm. Wireless Div., Wireless Telecomm. Bur. rel. February 10, 1998).

026

In the absence of a Commission waiver, Section 32.27(c) of the Commission's Rules³ requires the assets transferred to a local exchange carrier affiliate to be assessed at the higher of cost less all applicable valuation reserves or estimated fair market value at the time of the transaction. In this case, the valuation would be applied at the time that assets associated with the provision of CMRS services would be assigned to a separate affiliate, as required under the Report and Order. Aliant asserts that the net result if fair market value is applied will be an inter-company gain, which "would have a substantial impact on a company the size of Aliant" (Petition at 3). PRTC agrees with this assessment and adds that the imposition of Section 32.27 valuation requirements will produce no benefit to ratepayers, but instead will impose significant costs on the company to develop a fair market value study. Under these circumstances, a waiver of the rule is warranted.

The rationale for recognizing gain at fair market value under the Commission's Rules is to ensure that regulated ratepayers, having borne the risk of loss, will benefit as a part of this or any intracorporate transaction when the assets involved have increased in value. This practice is consistent with the long-held notion that "the right to capital gain on utility assets is tied to the risk of capital losses."⁴ Thus,

³ 47 C.F.R. § 32.27(c).

⁴ See Democratic Central Committee v. Washington Metropolitan Area Transit Commission, 485 F.2d 786, 806 (D.C. Cir. 1973), cert. denied, 415 U.S. 935 (1974).

Part 32 of the Commission's Rules imposes accounting practices for regulated revenues and assets that ensures the benefit of gain for the regulated ratepayers who also have been exposed to the risk of loss.

In the case of assets associated with the provision of commercial mobile radio services, however, this class of ratepayers has never been exposed to any risk of loss. Although PRTC included wireless services in the nonregulated category of its Cost Allocation Manual as of January 1, 1998, these services have been treated as nonregulated prior to that date as well through the exclusion of wireless investments, revenues, and expenses from interstate ratemaking. For example, information filed with the National Exchange Carriers Association excluded such amounts related to wireless services from the regulated category.⁵ Because the costs of wireless services have been excluded from the ratemaking process, regulated ratepayers have borne no risk of losses incurred from the provision of such services. Therefore, they are not entitled to gains resulting from the transfer of such assets, and adherence to Section 32.27 is not required on their behalf.


The risk of loss for providing regulated interstate and intrastate services has been borne by the Puerto Rico Telephone Authority ("PRTA"), the sole-owner of PRTC. Thus, PRTA would be entitled to any gains associated with the transfer of wireless

⁵ Similarly, PRTC's rates for regulated intrastate services do not include the costs of providing wireless services.

assets to a separate affiliate. However, to be able to record such gains in a nonoperating account that would be excluded from the regulated ratemaking process, PRTC would have to incur substantial administrative costs to determine the higher of fair market value or net book value. Given that the benefits of such a gain would inure solely to the company itself, there is no reason to impose on the company the costs associated with estimating and reflecting this gain.

For these reasons, PRTC requests that the Commission grant the Petition for Reconsideration and extend any the requested waiver to all similarly affected companies.

Respectfully submitted,



Joe D. Edge
Tina M. Pidgeon
DRINKER BIDDLE & REATH LLP
901 Fifteenth Street, N.W.
Suite 900
Washington, DC 20005
(202) 842-8800

Attorneys for
PUERTO RICO TELEPHONE COMPANY

Dated: February 10, 1998

CERTIFICATE OF SERVICE

I, Dottie E. Holman, do hereby certify that a copy of the foregoing Comments of Puerto Rico Telephone Company was sent by hand-delivery and first-class mail this 10th day of February, 1998, to the following:

Magalie Roman Salas
Secretary
FCC
1919 M Street, NW, Room 222
Washington, DC 20554


Michael K. Kurtis*
Jeanne W. Stockman
Attorneys for Aliant Communications Co.
Kurtis & Associates, P.C.
2000 M St., N.W., Ste. 600
Washington, D.C. 20036

Robert J. Keller*
Attorney for Guam Cellular and
Paging, Inc.
4200 Wisconsin Ave., N.W.
Suite 106-233
Washington, D.C. 20016-2157

Nicholas W. Allard/Michael S. Wroblewski*
Nandan M. Joshi
Independent Telephone &
Telecommunications Alliance
Latham & Watkins
1001 Penn. Ave., N.W., Ste. 1300
Washington, D.C. 20004-2505

David W. Zesigner*
Independent Telephone &
Telecommunications Alliance
1300 Connecticut Ave., N.W.
Washington, D.C. 20036

ITS
1231 20th Street, N.W., Room 102
Washington, DC 20036


Dottie E. Holman